

## EXHIBIT 38

Secretary

U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

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MEMORANDUM FOR: Thomas S. Winkowski  
Acting Director  
U.S. Immigration and Customs Enforcement

Catherine Emerson  
Chief Human Capital Officer  
Department of Homeland Security

FROM: Jeh Charles Johnson  
Secretary

SUBJECT: **Personnel Reform for Immigration and Customs  
Enforcement Officers**

In recent years, Immigration and Customs Enforcement's (ICE) priority missions have increasingly focused on national security and public safety. In furtherance of that, the Office of Enforcement and Removal Operations' (ERO) enforcement strategy and initiatives have shifted heavily towards the investigation, identification, location, arrest, prosecution, and removal of criminal and other aliens who present a danger to national security or threaten public safety. This targeted approach has in fact resulted in record-breaking numbers of criminal removals. ICE ERO has accomplished this under a personnel structure that lags behind that of other federal law enforcement agencies and components, including other ICE components. This discrepancy hurts morale and presents other management challenges. I know you share my commitment to address this.

Today we announced new enforcement priorities for the Department of Homeland Security (DHS) that will further ICE ERO's focus on DHS's national security and public safety missions. I have concluded that these policy changes should be accompanied by a recalibration of ICE ERO's workforce and personnel pay structure.

Accordingly, I direct the following:

**A. Job Series Realignment for ICE ERO Officers**

First, ICE ERO, in conjunction with the Office of the Chief Human Capital Officer (OCHCO), must conduct an expeditious review of the work performed by ERO officers. This review will identify gaps in current job series to support a classification that accurately reflects ICE ERO's realigned mission to national security and public safety. ICE ERO officers are responsible for conducting investigations, executing arrests, preparing cases for prosecution, and managing the detention and removal of foreign nationals in the United States who pose threats to public safety and national security. Their work involves close coordination and negotiations with domestic and foreign law enforcement agencies. They also compile and report intelligence that is shared across law enforcement and intelligence communities, supporting DHS's national security mission.

This review will also identify ICE ERO officer positions that supervise, lead, or perform homeland security work through the enforcement of federal criminal and civil laws and will be used to update classification of all ICE ERO officers as required. It is anticipated that any changes in job classification structure for ICE ERO employees will permit management to make more flexible and efficient staffing and workload decisions and allow for outstanding performers to rise through the ranks.

**B. Premium Ability Pay Coverage for ICE ERO Officers**

Second, ICE ERO and the OCHCO must review the premium pay coverage for ICE ERO officers and determine what changes may be required to compensate ICE employees adequately and equitably for the work they perform. This review should include an evaluation of administrative and statutory reform alternatives, including Law Enforcement Availability Pay (LEAP), that may be required to improve the current ICE ERO premium pay system, as well as an assessment of the potential benefit and justification for including ICE ERO officers in alternative premium pay systems.

**C. Next Steps**

I will thus recommend that the Administration pursue and prioritize regulations and legislation necessary to address job series realignment and premium pay structure that synchronizes our personnel structure and compensation with the critical mission the component executes on behalf of the public.

As practicable, these efforts should be completed according to the following schedule: December 2014 completion of job series classification and premium pay system review; December 2014 submission of analysis and recommendations to the Office of Personnel Management and the Office of Management and Budget; January 2015 final recommended personnel reforms for ICE ERO officers; and February 2015 announcement of recommended personnel reforms and submittal of required statutory and resource proposals to Congress.